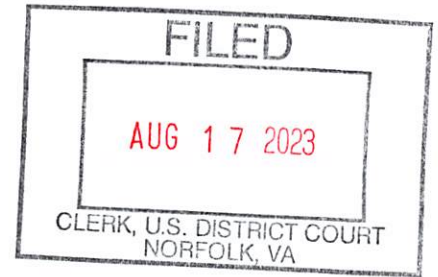


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
*Norfolk Division*



IN THE MATTER OF THE ISSUANCE  
OF A CRIMINAL COMPLAINT RE:

DANIEL LOUIS BURKY

Case No.: 2:23-mj 163

**AFFIDAVIT IN SUPPORT OF APPLICATION**

I, Detective Timothy S. Kelly, Task Force Officer with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice, being duly sworn, depose and state as follows:

**EXPERIENCE AND TRAINING**

1. Your Affiant is a Task Force Officer for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and has served in that capacity since January 6, 2022. Your Affiant is currently assigned to the Norfolk, Virginia Field Office and is charged with investigating violations of federal firearms, explosives, and arson laws.

2. After retiring from the United States Navy as a senior chief, your Affiant began his law enforcement career with the Virginia Beach Police Department (Virginia) in March 2017. Your Affiant graduated from the Virginia Beach Police Department's Basic Law Enforcement Academy in September 2017. During that training your Affiant received basic law enforcement training, to include training in illegal drug identification, and enforcement of drug and explosives laws. During your Affiant's employment with the Virginia Beach Police Department your Affiant has received continued training on illegal drugs, to include the way they are packaged, transported, sold, and used. Additionally, your Affiant has also attended training on explosives to include, but not limited to, the course "Homemade Explosives: Awareness, Recognition, and Response" through the New Mexico Institute of Mining and Technology (NMT).

3. During your Affiant's career with the Virginia Beach Police Department, your Affiant has worked as a Patrol Officer, on a Community Oriented Policing (COP) Squad, on an Oceanfront Community Oriented Policing (OCOP) Squad, and currently as a Detective assigned to the Gun Trace Unit. While assigned to these positions, your Affiant has conducted criminal law enforcement along with various investigations throughout the City of Virginia Beach.

4. As a federal Task Force Officer, your Affiant is authorized to investigate violations of federal law and to execute warrants under the authority of the United States.

5. Your Affiant is only submitting those facts which he believes are necessary to establish probable cause in this matter. This affidavit should not be construed as a complete statement of all the information generated from the investigation.

6. The statements in this affidavit are based, in part, on my investigation of this matter along with information provided by other law enforcement officers/agents. I have become aware of the facts and circumstances described below through my personal observation, reports completed by the Virginia Beach Police Department, memorandums completed by the Virginia Beach Fire Marshal's Office, information provided by the Commonwealth of Virginia Department of Forensic Science (DFS), and information provided by other law enforcement officers/agents.

7. Based on the investigation probable cause exists to show that:

(Count One) on or about July 14, 2022, at a residence in Virginia Beach, in the Eastern District of Virginia, the defendant DANIEL LOUIS BURKY, an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act) did unlawfully possess any explosive which has been shipped or transported in or affecting interstate

or foreign commerce, in violation of Title 18, United States Code, Sections 842(i)(3) and 844(a)(1), 847, and 27 C.F.R. 555.23, 555.26 et seq.

(Count Two) on or about July 14, 2022, at a residence in Virginia Beach, in the Eastern District of Virginia, defendant, DANIEL LOUIS BURKY knowingly received and possessed one or more firearms (firearm silencers) and one or more explosive materials/explosive mixture(s)(explosives), all not registered to him in the National Firearms Registration and Transfer Record, all in violation of Title 26, United States Code, Sections 5841, 5845(a), 5845(f), 5861(d), and 5871.

(Count Three) on or about July 14, 2022, at a residence in Virginia Beach, in the Eastern District of Virginia, defendant, DANIEL LOUIS BURKY knowingly possessed a firearm (firearm silencer) not identified by a serial number as required by the Chapter 26 of Title 26, all in violation of Title 26, United States Code, Sections 5845(a) 5861(i), and 5871.

#### **STATEMENT OF FACTS**

8. On July 14, 2022, Deputies from the Virginia Beach Sheriff's Department were assisting in the lawful execution of an Eviction Writ issued by a Court in the City of Virginia Beach for the defendant, DANIEL LOUIS BURKY (BURKY), to be evicted from an apartment in Chapel Lake Apartments in Virginia Beach, located in the Eastern District of Virginia.

9. Deputies were given keys to the apartment by maintenance personnel. Once in possession of the keys, Deputies knocked on the apartment door and announced their presence, but there was no answer. After entering the apartment using the key, Deputies again announced their presence. At this time a male emerged from around the corner of the foyer/living area of the front entry of the apartment and identified himself as DANIEL BURKY. He told the Deputies that he did not hear the knock. The Deputies explained the purpose of their presence

and BURKY informed them that firearms were present in the apartment. BURKY was then asked to step outside while Deputies conducted a safety sweep of the apartment. BURKY complied and stepped outside the apartment.

10. While conducting the safety sweep, Deputies located an AK-47 style firearm in the bedroom that BURKY came out from. The Deputies then radioed in the serial number of the AK-47 style firearm, which initially came back as having been reported stolen. After additional observations of multiple firearms (one believed to have been stolen), along with user amounts of controlled substances and narcotics paraphernalia, and possible explosive material(s) located throughout the apartment, the Deputies secured the apartment and called for assistance from the Virginia Beach Police Department (VBPD).

11. When VBPD Officer Trask arrived, BURKY was handcuffed at the top of the landing outside the apartment. Officer Trask entered the apartment and saw what appeared to be a crack cocaine pipe, along with other smoking paraphernalia. The Deputies showed Officer Trask the rifle (believed to be stolen at the time), boxes of firearm suppressors in the closet, a ballistic helmet, a ballistic vest, a gas mask, and multiple rifle magazines. Officer Trask then called his supervisor to respond to the scene and confirmed that BURKY was not a convicted felon. The Deputies then showed Officer Trask a box with mesh steel wool used as a filter for narcotics pipes, as well as pink baggies that contained a crystal-like substance, that were discovered in a back room of the apartment. BURKY was then moved to the back seat of Officer Trask's police car.<sup>1</sup>

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<sup>1</sup> On May 24, 2023, Burky entered a plea of guilty to felony possession of controlled substances and felony possession of firearms while in possession of controlled substances in the Virginia Beach Circuit Court. He is pending sentencing on August 22, 2023.

12. Officer Trask then read BURKY his Miranda rights from a pre-printed card. When BURKY was asked if he understood his rights, he stated that he did. Among other things, BURKY told Officer Trask that he lived in the apartment alone.

13. Officer Trask's supervisor Sgt. Sloan then called for the Virginia Beach Fire Department (Vbfd), Fire Investigator (Police) Fire Marshal to respond. Sgt. Sloan provided Investigator Huey (Police) Fire Marshal, with a brief synopsis of the situation and described a pink plastic bag, containing a white crystalline substance, that was found atop some road flares inside the apartment.

14. Based on Investigator Huey's knowledge, training, and experience, he believed there was a possibility that the bag contained a homemade explosive (HME). Because HMEs are known to be extremely unstable, he directed Sgt. Sloan to put the bag down gently and instructed everyone to evacuate the apartment. Investigator Huey then responded to the apartment along with VBPD Bomb Technician Mike Melnyk.<sup>2</sup>

15. VBPD Bomb Squad members arrived and conducted a search of the apartment for explosive hazards. Their search and cursory testing identified the material as a potential binary explosive consisting of Ammonium Nitrate (AN) and Aluminum (AL) that, when combined, becomes a chemical compound referred to as ANAL.<sup>3</sup>

16. After the Fire Department responded, they applied for search warrants for the apartment, BURKY'S vehicle and, later, several cellular phones, a laptop, and a jump drive. BURKY was arrested for illegal possession of a controlled substance and illegal possession of a

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<sup>2</sup> Investigator Huey secured consent to search from the Apartment representative at 1343 hours.

<sup>3</sup> Through information and belief, the seized suspected binary explosive mixture is used in production of exploding target(s) and is legal to own as long as the two components are kept separate until used. Once the two components are mixed, they become a regulated explosive mixture under federal law (18 U.S.C. § 841(d); 27 CFR 555.23)

controlled substance while possessing a firearm. The Search Warrant for the apartment was issued by a Virginia Beach Magistrate and, during the subsequent search, the suspected explosives mixture, as well as fireworks, firearms, firearm suppressors (firearm muffler(s) or silencer(s)), narcotics, narcotic paraphernalia, and electronics were seized.

17. A subsequent review of the seized electronic evidence showed numerous videos of BURKY shooting both handguns and rifles outfitted with suppressors (firearm muffler(s) or silencer(s)). Some of these videos took place after-hours within the garage of an auto repair business BURKY was employed by at the time.

18. Also, clearly displayed in the videos, and verbally acknowledged by BURKY, is a VBPD marked patrol vehicle within the garage, along with another Virginia Beach City vehicle on one of the vehicle lifts.<sup>4</sup>

19. The explosives were sent to the Commonwealth of Virginia Department of Forensic Science (DFS) for analysis on July 20, 2022. On July 28, 2022, DFS provided a Certificate of Analysis confirming the suspected binary explosive mixture as - Ammonium Nitrate, Potassium Perchlorate, Aluminum, and Sulfur - further stating, "with proper initiation, this mixture would be expected to explode."

20. October 14, 2022, an expert with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) determined that the materials evaluated in this investigation were consistent with the remains of an improvised explosive...consisted of a quantity of explosive powder, identified by laboratory analysis as nitrate and perchlorate explosive mixture... and that initiation of the material would result in an explosion. The explosion would produce blast and thermal effects capable of causing property damage, injury and or death to persons and property

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<sup>4</sup> BURKY is not a Virginia Beach Police Officer, nor has he ever been one based on information and belief.

nearby...and that mixture and would constitute “explosives” as that term is defined in Chapter 40 of Title 18 of the United States Code and would be controlled/regulated under the federal explosives’ regulations.

21. At the time of these offenses, BURKY did not possess, and has never possessed, either a Federal Explosives License (FEL) or a Federal Firearms License (FFL) under Title 26 of the United States Code (The National Firearms Act).

22. Further investigation revealed that these explosive materials were manufactured outside the Commonwealth of Virginia and were, therefore, transported in or affected interstate or foreign commerce.

23. The recovered firearm suppressors (firearm muffler(s) or silencer(s)) were shipped to the ATF Firearms & Ammunition Technology Division (FATD) for official analysis. Shortly thereafter, a Firearms Enforcement Officer from FATD preliminarily and “verbally” confirmed them to be “firearm silencers” or “firearm mufflers,” as defined in 26 U.S.C. § 5645(a) incorporating 18 U.S.C. § 921(a)(24). Further, these devices were not registered to BURKY in the National Firearms Registration and Transfer Record, as required by 26 U.S.C. § 5861(d).

24. On August 2, 2023, ATF FATD released the final two hundred and thirty-five-page report of technical examination of the submitted firearm suppressors (firearm muffler(s) or silencer(s)), which certified that all but one were in fact “firearm silencers” or “firearm mufflers,” as defined in 18 U.S.C. § 921(a)(25) and/or a “firearm” as defined in 18 U.S.C. § 921(a)(3)(C), 26 U.S.C. § 5845(a)(7). Additionally, many of the submitted firearm suppressors (firearm muffler(s) or silencer(s)) bear no NFA manufacturer’s marks of identification or serial numbers as required by 26 U.S.C. § 5842.




**CONCLUSION**

25. Based on the above facts, probable cause exists to charge with the following:

(Count One) on or about July 14, 2022, at a residence in Virginia Beach, in the Eastern District of Virginia, the defendant DANIEL LOUIS BURKY, an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act) did unlawfully possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce, in violation of Title 18, United States Code, Sections 842(i)(3) and 844(a)(1), 847, and 27 C.F.R. 555.23, 555.26 et seq.

(Count Two) on or about July 14, 2022, at a residence in Virginia Beach, in the Eastern District of Virginia, defendant, DANIEL LOUIS BURKY knowingly received and possessed one or more firearms (firearm silencers) and one or more explosive materials/explosive mixture(s)(explosives), all not registered to him in the National Firearms Registration and Transfer Record, all in violation of Title 26, United States Code, Sections 5841, 5845(a), 5845(f), 5861(d), and 5871.

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Timothy S. Kelly  
Task Force Officer, Bureau of Alcohol,  
Tobacco, Firearms and Explosives

Sworn to and subscribed to  
before me on August 17, 2023.

  
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United States Magistrate Judge